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12 *Pacifica Senior Living Management LLC*

13
14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16

17 SCOTT HARGIS d/b/a SCOTT
HARGIS PHOTO, an individual,

18 Plaintiff,

19 vs.
20

21 PACIFICA SENIOR LIVING
MANAGEMENT LLC, a California
limited liability company, and DOES 1
22 through 10

23 Defendants.

CASE NO. 2:22-cv-06989-MCS-PD

**DEFENDANT'S ANSWER TO
COMPLAINT**

1 Defendant Pacifica Senior Living Management LLC (hereinafter
2 “Defendant”) answers Plaintiff Scott Hargis d/b/a Scott Hargis Photo’s Complaint
3 as follows.

4 **JURISDICTION AND VENUE**

5 1. Defendant denies Plaintiff’s allegations of infringement. Defendant
6 admits the remainder of the allegations in this paragraph.

7 2. Defendant denies Plaintiff’s allegations of infringement. Defendant
8 admits the remainder of the allegations in this paragraph.

9 3. Defendant does not contest that venue is proper and personal
10 jurisdiction exists over it for purposes of this matter. Defendant admits it owns and
11 operates business in California and has a place of business in San Diego,
12 California. Defendant denies any injury to Plaintiff and denies any allegations of
13 infringement in this paragraph.

14 **PARTIES**

15 4. Defendant lacks knowledge or information sufficient to form a belief
16 regarding the allegations in this paragraph.

17 5. Defendant denies that it exists under the laws of the state of California
18 because Defendant is a California d/b/a of Delaware company Pacifica Senior
19 Living LLC. Defendants admits the remainder of the allegations in this paragraph.

20 6. Defendant lacks knowledge or information sufficient to form a belief
21 regarding the allegations in this paragraph.

22 **PLAINTIFF’S STATEMENT OF FACTS**

23 7. Defendant lacks knowledge or information sufficient to form a belief
24 regarding the allegations in this paragraph.

25 8. Defendant lacks knowledge or information sufficient to form a belief
26 regarding the allegations in this paragraph.

27 9. Defendant lacks knowledge or information sufficient to form a belief
28 regarding the allegations in this paragraph.

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1 10. Defendant lacks knowledge or information sufficient to form a belief
2 regarding the allegations in this paragraph. Defendant denies any implication that
3 Plaintiff photographed properties when they were “Pacifica communities” because,
4 on information and belief, Plaintiff was hired by a prior owner.

5 11. Admit.

6 12. Admit.

7 13. Deny.

8 14. Defendant admits that Pacifica has displayed on its website certain
9 photos shown in Exhibit B. Defendant denies it has “exploited” the photos and
10 denies the remainder of the allegations in this paragraph.

11 15. Defendant admits it is a sophisticated for-profit business with
12 knowledge of copyright law. Defendant admits it owns various trademarks and
13 copyrights and that it policies and protects its own intellectual property. Defendant
14 denies all allegations of infringement, willful infringement, and the remainder of
15 allegations in this paragraph.

16 16. Defendant denies all allegations of willful and infringing conduct.

17 17. Defendant denies the photos were featured on its website without
18 license or consent, denies all allegations of infringement, and denies any allegation
19 of a “meritorious basis” for Plaintiff’s claims. Defendant admits the remainder of
20 the allegations in this paragraph.

21 18. Defendant admits it believed it had taken down all images as of April
22 26, 2021 and admits in response, Plaintiff’s representative provided Defendant
23 with links of the alleged infringement. Defendant denies it engaged in any
24 “misrepresentation” and denies the remainder of allegations in this paragraph.

25 19. Defendant lacks information and belief as to when any information
26 “came to Plaintiff’s attention.” Defendant denies the remainder of allegations in
27 this paragraph.

28 20. Deny.

1

2 **AFFIRMATIVE DEFENSES**

3 Defendant asserts and interposes the following affirmative defenses in
4 response to the allegations in Plaintiff's Complaint, undertaking the burden of
5 proof only as to those defenses deemed affirmative defenses by law and for which
6 the law imposes the burden on Defendant, regardless of how such defenses are
7 denominated. Defendant expressly reserves the right to add additional affirmative
8 defenses, and to assert other defenses, which become known through investigation,
9 discovery, or other proceedings, in this matter.

10 **FIRST AFFIRMATIVE DEFENSE**

11 The Complaint fails to state a claim upon which relief can be granted.

12 **SECOND AFFIRMATIVE DEFENSE**

13 The Complaint is barred, in whole or in part, by the equitable doctrines of
14 acquiescence, waiver, laches, or estoppel.

15 **THIRD AFFIRMATIVE DEFENSE**

16 The Complaint is barred, in whole or in part, by the equitable doctrine of
17 unclean hands.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 Defendant's alleged use of any protected photographs was permitted use
20 pursuant to a license, express or implied.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 Without admitting that the Complaint states a claim, the Complaint is barred,
23 in whole or in part, by the equitable doctrine of mistake, as any wrongful acts
24 alleged to have been committed by Defendants occurred innocently upon good
25 faith, with a lack of knowledge and/or a lack of willful intent.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 Defendant's alleged use of any protected photographs was authorized and
28 consented to by Plaintiff.

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SEVENTH AFFIRMATIVE DEFENSE

On information and belief, the works Plaintiff pleads as protected by copyright lack the requisite degree of creativity to merit copyright protection.

EIGHTH AFFIRMATIVE DEFENSE

On information and belief, Plaintiff has failed to comply with the statutory formalities for obtaining a copyright registration, and thus the pleaded registrations are invalid or unenforceable.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of misuse of copyright.

TENTH AFFIRMATIVE DEFENSE

Plaintiff is barred by 17 U.S.C. section 412 from claiming statutory damages or attorney's fees under the Copyright Act in that any alleged acts occurred before the respective registration of the Plaintiff's alleged works.

ELEVENTH AFFIRMATIVE DEFENSE

The contents of, and Defendant's alleged use of any protected photographs subject to Plaintiff's copyright infringement claim, is protected by the First Amendment of the United States Constitution.

TWELFTH AFFIRMATIVE DEFENSE

The contents of, and Defendant's alleged use of any protected photographs subject to Plaintiff's copyright infringement claim, is protected by the doctrine of fair use.

THIRTEENTH AFFIRMATIVE DEFENSE

The work that Plaintiff claims has been infringed is not entitled to copyright protection because the work is in the public domain.

FOURTEENTH AFFIRMATIVE DEFENSE

Any alleged damages suffered by Plaintiff were not proximately caused by any act or omission by Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by reason of Plaintiff's failure to join an indispensable or necessary party.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff failed to properly mark its alleged copyrighted material and failed to give Defendant sufficient notice.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant denies copyright infringement and denies the accused work is substantially similar to the asserted work, but if there was any use (which is denied) of the asserted work, any alleged use of any protectable expression of ideas from the asserted work is, at most, *de minimis* and therefore not actionable.

EIGHTEENTH AFFIRMATIVE DEFENSE

Without admitting that the Complaint states a claim, Plaintiff has not been damaged in any amount, manner, or at all by reason of any act alleged against Defendant in the Complaint, and the relief sought therefore cannot be granted.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because the complained-of actions, to the extent they occurred, were the result of conduct by third parties.

TWENTIETH AFFIRMATIVE DEFENSE

Should Plaintiff recover damages from this Defendant, Defendant is entitled to indemnification, either in whole or in part, from all persons whose actions proximately contributed to Plaintiff's damages, if any.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist.

TWENTY-SECOND AFFIRMATIVE DEFENSE

On information and belief, to the extent Plaintiff had any copyright interest in any photographs asserted in the Complaint, he has abandoned or forfeited them.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of merger.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part, by the doctrine of *scenes a faire*.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff cannot satisfy the requirements for its request for injunctive relief and has an adequate remedy at law.

Dated: November 18, 2022

GORDON REES SCULLY
MANSUKHANI, LLP

By: /s/ Hazel Mae B. Pangan
Susan B. Meyer
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